

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 115 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
lto5: No
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LALU DHANJI KHRADI

Versus

STATE OF GUJARAT

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Appearance:

MR PM THAKKAR for the appellants
LAPP Mr. for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 27/02/97

ORAL JUDGEMENT (N.J.Pandya,J.)

All the five accused-appellants came to be charged with offence under Sections 147,148,302,323,324, and 447 IPC read with Sec.149 and in the alternative read with Sec.34. By judgment dated 6-2-1989, the learned Addl.Sessions Judge of Sabarkundla at Himmatnagar in Sessions Case No.36 of 1988 has acquitted the accused of

the charge of unlawful assembly levelled against them and thereafter considering the act attributed to each of the accused, he proceeded to convict for what he considered to be the offence that has been committed by the respective accused individually. Accordingly, accused no.1 came to be convicted for offence under Sec.302 as also for offence under Sec.323. For the capital offence, he was awarded R.I. for life and a fine of Rs.200/- and in default, S.I. for 15 days. No separate sentence for offence under Sec.323 seems to have been awarded. Accused nos. Accused nos.2,3 & 4 came to be convicted individually for offence under Sec.323 and only sentence of fine of Rs.200/- and in default S.I. for 15 days came to be awarded to each of the accused. Again accused no.3 & 5 came to be convicted for offence under Sec.324 IPC and were awarded imprisonment till rising of the Court and a fine of Rs.500/- and in default to undergo SI for 2 months. The incident happened on 19-6-1987 at about 8.00 AM in the field bearing survey No.233 of village Naliawad of Taluka Vijaynagar. The said Survey Number originally belonged to "Pal Jagir". On abolition of estates and Jagirdari system, the land came to be renumbered and vested amongst the descendent of two tillers. The accused belonged to one group and the prosecution witnesses belonged to the other. There are revenue entries on record and it has been very amply discussed and dealt with by the learned trial Judge. The situation that emerges, as a result of this is that the land in question is very much in dispute and in absence of demarcation of shares, there is always a possibility of one group feeling that the other is encroaching upon their area. In this background, when the learned trial Judge, after considering the testimony of the injured eye witnesses Ramji Devaji, p.w.1, Exh.24, Gomiben Kalaji, p.w.2, Exh.27, Devaji Nanaji p.w.3, Exh.28, p.w.4 Daliben Ravjibhai Exh.28 and others held in the aforesaid manner.

2. Our attention was drawn by learned Sr. Advocate Mr.Thakkar appearing for the accused-appellants to paragraphs 51 and 53 of the judgment pages 495 and 505 respectively. In these pages, the learned Judge, has discussed the evidence led before him with regard to the civil disputes pertaining to the problem. Thereafter, in our opinion, he has very correctly come to the conclusion that the accused did feel that encroachment is committed by the prosecution party and therefore, the articles which are ordinarily used as agricultural implements but in a given situation can also be used as weapon namely axe, dharia and sticks are made use of. When agriculturists go to their agricultural field, such equipments for their own use, are ordinarily carried by

them and when situation worsens, whatever is at hand is made use of. No doubt, it would take the characteristic of a weapon, but in the said background, the use thereof will assume different colour, especially when we are considering whether different offences said to have been committed by the accused-appellants are made out or not. Ramji Devji, p.w.1, Exh.24 is the complainant. His deposition is at page 213 onwards. During his cross-examination, in para 13, page 221 to 223 as also in para 14 page 225, he has categorically admitted that the incident began with verbal quarrel and then temper started rising and soon, it developed into a fight between two groups. In para 14, he has, in no uncertain terms, stated that there was a fight between the two groups. Both were quarelling with each other and fighting with each other.

4. When the learned Judge in the aforesaid paragraphs of his judgment has accepted the possibility of accused feeling that their property is being encroached upon and therefore, has also accepted the possibility of the accused acting in exercise of right of private defence, obviously, the said admission on the part of the complainant would go a long way in deciding whether it was an offence under Sec.302 IPC so far as accused no.1 is concerned. Obviously, it cannot be an offence under Sec.302, it will be one punishable under Sec.304 as it is a case of culpable homicide not amounting to murder. Accused no.1 has been in jail right from the day of his arrest and under the circumstances we consider that what he has undergone is sufficient.

5. So far as accused no.2,4 & 5 are concerned, in the aforesaid background they having remained in jail as undertrial prisoner for sometime or the other, there is no question of either altering the sentence as awarded or interfering with the order of conviction either. Their appeal is therefore, rejected. So far as accused no.3 is concerned, there is a serious manner of doubt whether he participated in the incident or not. The reason is that he could not have remained present on account of his duty as a Circle Inspector and for that he has stated in his statement under Sec.313 that he had left his village on the previous afternoon and came back only by 4.00 p.m. on the evening of the day of the incident and he returned to his working place i.e. Vijaynagar, which is at a distance of 20 kms. from the village, where the incident occurred. In the complaint given by p.w.1 which is at page 237, Exh.26, while describing the incident even the complainant says that accused no.3 came running on the scene after the main incident pertaining to deceased

Savji was over. His roll in that incident, if at all there be any, is that of mere physical presence. He has, no doubt, pleaded alibi, but being a Circle Inspector, in the Revenue Department of the State of Gujarat, if he were on official duty he could have certainly produced evidence on record and so far as the said plea of alibi is concerned, except for oral plea no supporting material is produced by him. However, in view of the aforesaid background and the situation as born out from the FIR, in our opinion, the conclusion that he participated in the incident cannot be accepted. His appeal is, therefore, allowed in its entirety and the order of conviction and sentence passed against him is set aside.

5. The net result, therefore, is that the appeal of accused no.1 is partly allowed and his order of conviction and sentence under Sec.302 is altered to that of one under Sec.304 part II and whatever sentence that he has undergone is held to be enough and he is ordered to be set at liberty forthwith, if not required for any other purpose. Appeals of accused nos.2,4 & 5 is rejected. Accused no.3 is acquitted of the offences that he is charged with. His appeal is allowed. Order of conviction and sentence is set aside. Fine, if paid, is ordered to be refunded.
